IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL WRIT PETITION NO. 986 OF 2004

YELLAPPA MANIK DESHETTY)

residing at Plot No.200, Kisan)

Akkalkot Road, Solapur-2)

Atpresent detained at Yerwada)

Central Prison, Pune) .. PETITIONER

vs

1. SHRI V. D. MISHRA)

Commissioner of Police,)

Solapur)

2. THE STATE OF MAHARASHTRA)

3. THE SUPERINTENDENT)

Nasik Central Prison Road,)

Nasik.) .. RESPONDENTS

Mr. U. N. Tripathi for petitioner

Mr. I. S. Thakur, APP

CORAM:-SMT. RANJANA DESAI &

A. S. OKA, JJ.

DATED:-9-9-2004

ORAL JUDGMENT: (Per Smt. Ranjana Desai, J.)

In this petition, the petitioner ("the detenu" for convenience) has challenged the order dated 29th March, 2004 issued by the Commissioner of Police, Solapur under Section 3 (1) of The Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers,Drug Offenders and Dangerous Persons Act, 1981 (for short "the said Act") with a view to preventing him from acting in any manner prejudicial to the maintenance of public order. The order of detention, grounds of detention and material in support thereof were served on the detenu on 29th March, 2004.

2. The order of detention rests on two cases registered under the Bombay Prohibition Act and two in-camera statements of witnesses A and B.

3. The first ground is C.R. No. 7418/03 under Section 66(i)(b), 65(c), 83 of Bombay Prohibition Act, 1949. It appears that on 28.10.2003, PSI Shinde and his staff of Jail Road Police Station, Solapur, arrived near a warehouse at Chakote Nagar and at about 21.30 hrs., they raided a spot. They found the detenu and his servant one Ashok Sidram Boda, selling country liquor-Hatbhatti to the customers namely Rajan, Imamsab Shaikh and Ambadas. During panchnama made at the spot the police seized two plastic cans, one of which was containing 5 liters Hatbhatti, 5 glasses and Rs.250/-. Pursuant to this

an offence came to be registered as aforesaid. The detenu was arrested and later released on bail on 29.10.03.

4. On 18/2/04 ASI Rashid Shaikh and his staff of Crime Branch, Solapur on information raided the spot behind Bidi Gharkul at Renuka Nagar, near Shri Jadhav's House. They found the detenu and his servant one Babu Vyankappa Piramal present there. They were in possession of three rubber motor tubes, containing 100 liters of country liquor valued at Rs.3000/-. A panchnama was duly recorded. Offence came to be registered being C. R. No. 6173/04 under Sections 66 (1) (b), 83 of the Bombay Prohibition Act, 1949. The detenu was arrested and was later released on bail on 18.2.04.

5. Confidential inquiries were made in the criminal activities of the detenu. In-camera statements of witnesses A and B were recorded, which indicated that the detenu is a habitual bootlegger and a weapon wielding desperado and his activities have adversely affected the maintenance of public order in the concerned area. It is in these circumstances that the instant order of detention came to be issued.

6. We have heard Mr. Tripathi, learned counsel appearing for the petitioner and Mr. I. S. Thakur, learned APP.

7. Mr. Tripathi has assailed the impugned order on two counts. Firstly he submitted that the order of detention must be set aside because there is a delay in consideration of the representation and in communication of the result of the representation to the detenu. Mr. Tripathi urged that the detenu's lawyer submitted a representation dated 12th April,

2004 to the State Government. A communication dated 22nd April, 2004 issued by the Under Secretary to the Government of Maharashtra was received by the lawyer of the detenu on 29.4.2004 stating that the representation of the detenu has been considered and his request has been rejected. This communication was dispatched on 27.4.04 i.e. after five days of rejection of the representation. The learned counsel contended that thus there is a delay of ten days in considering the representation and further unexplained delay in communicating the rejection reply to the detenu. This delay, according to the learned counsel is fatal to the order of detention.

8. In this connection, the learned counsel relied on Harish Pahwa v. State of Uttar Pradesh & Ors., 1981 (3) S.C.R. 276, Rama Dhondu Borade v. V. K. Saraf, Commissioner of Police & Ors., A.I.R. 1989 S.C. 1861, and a decision of Division Bench of this Court in Sadanand M. Shaligram v. L. Hmingliana, Secretary (Preventive Detention) Govt. of Maharashtra & Ors. in Criminal Writ Petition No. 726 of 1990 decided on 7th of November, 1990.

9. As against this the learned APP contended that there is absolutely no delay in considering the representation and communicating the result thereof to the detenu. The learned APP drew our attention to the affidavit where explanation as regards consideration of representation is offered. He drew our attention to the record of Yerwada Central Prison, Pune and pointed out that from the copy of the communication dated 26.4.2004 which is in the record of Yerwada Central Prison, it can be seen that on 24.4.04 the detenu was served with communication dated 26.4.04 and he has signed in token of having received the same. He, therefore, submitted that this submission of Mr.

Tripathi must be rejected.

10. In our opinion, the first submission of Mr. Tripathi as regards the delay in considering the representation must fail. In the affidavit in reply filed by Satish Narayan Pawaskar, Under Secretary, Home Department (Special) Government of Maharashtra, the time taken to consider the representation of the detenu has been properly explained. In paragraph 1 it is stated that the representation dated 12.4.04 from the advocate of the detenu addressed to the Secretary to the Government of Maharashtra (Preventive Detention), Home Department (Special), Mantralaya, Mumbai 400 032, was received in the evening of the same day. As the material was available on record the said representation was scrutinized and processed through the concerned Assistant on 13.4.04 and forwarded to the Section Officer. The Section Officer endorsed it on the same day and forwarded it to the Deputy Secretary. The Deputy Secretary considered it and forwarded it to the Additional Chief Secretary (Home) who marked the file to Joint Secretary (Law) for some query on 15.4.04. On 14.4.04 there was a holiday. The Joint Secretary (Law) again marked the file back to the Additional Chief Secretary with his explanation on 17.4.04. On 18.4.04 there was holiday. Thereafter the Additional Chief Secretary (Home) considered the representation carefully and rejected it on 21.4.2004. The rejection reply was issued on 22.4.04. In our opinion, the State has properly explained the time taken to consider the representation. We do not find any callousness or remissness on the part of the State in considering the representation.

11. In this connection, we may refer to the Constitution Bench judgment in Jayanarayan Sukul v. State of West Bengal, A.I.R. 1970 SC 675 where the Constitution Bench was considering the same question. The Constitution Bench observed that no definite time

can be laid down within which a representation of a detenu should be dealt with save and except that it is a constitutional right of a detenu to have his representation considered as expeditiously as possible. It will depend upon facts and circumstances of each case whether the appropriate Government has disposed of the case as expeditiously as possible.

12. We may also usefully refer to the judgment of the Supreme Court in Abdul Salam alilas Thiyyan v. Union of India & Ors., A.I.R. 1990 SC 1446 where the Supreme Court has observed that no hard and fast rules as to the measure of reasonable time can be laid down and each case has to be considered from the facts presented therein and, if there is no negligence or callous inaction or avoidable redtapism it does not warrant interference. These judgments of the Supreme Court make it clear that whether there is delay or not has to be considered taking into account facts of each case. In a given case short unexplained delay may be fatal. In other case long delay, if explained properly will not vitiate the order of detention. There are no hard and fast rules.

13. In Rama Borade's case (supra) on which Mr. Tripathi has placed reliance while setting aside the order of detention the Supreme Court clarified that there is no prescribed period either under the provisions of the Constitution or under the concerned detention law within which the representation should be dealt with. The use of the words "as soon as may be" occurring in Art. 22(5) of the Constitution reflect that the representation should be expeditiously considered and disposed of with due promptitude and diligence and with a sense of urgency and without avoidable delay. What is reasonable dispatch depends on the facts and circumstances of each case and no hard and fast rule can be laid

down in that regard. The Supreme Court further observed that in case the gap between the receipt of the representation and its consideration by the authority is so, unreasonably long and the explanation offered by the authority is so unsatisfactory, such delay could vitiate the order of detention.

14. Judged in the light of the above judgments, in the facts of this case, we do not find there is any unreasonably long unexplained delay in considering the representation of the detenu.

15. Mr. Tripathi, however, laid stress on the time taken to serve the communication on the advocate of the detenu. According to him the communication dated 22.4.04 was dispatched on 27.4.04 and was received by the detenu's advocate on 29.4.04. He submitted that there is no explanation offered for this. No affidavit has been filed by the State explaining this delay. The learned counsel submitted that it is obligatory on the part of the detaining authority to explain even the delay in communicating the result of the representation to the detenu.

16. In this connection he drew our attention to the judgment of the Supreme Court in Harish Pahwa's case (supra). In that case the order of detention was dated 16th May, 1980 and the representation made by the detenu against it was dated 3rd June, 1980. The State Government received that representation on 4th June, 1980 but for two days no action was taken in connection with it. On 6th June, 1980 comments were called for from the Customs Authorities with regard to the allegations made in the representation and comments were received by the State Government on 13th June, 1980. On 17.6.80

the State Government referred the representation to its law department for its opinion which was furnished on 19.6.80. The representation was rejected by an order dated 24.6.80 which was communicated to the jail authorities two days later. The case of the state was that the representation was with the Customs authorities who were formulating their comments from 7th June, 1980 to the 12th June, 1980 and that the representation was under the consideration of the Government for four days from 13th June, 1980 to 16th June, 1980, of its Law Department from 17th June, 1980 to 19th June, 1980 and then again under its own consideration for six days from 19th June, 1980 to 24th June, 1980.

17. Against the background of these facts the Supreme Court observed that there was no explanation as to why no action was taken in reference to the representation on 4th, 5th and 25th of June, 1980. The Supreme Court further observed that it was not clear what consideration given by the Government to the representation from 13th June, 1980 to 16th June, 1980. The Supreme Court was distressed at the fact that the representation had to travel from table to table for six days before reaching the Chief Minister who was the only authority to decide the representation. The Supreme Court then observed that calling comments from other departments, seeking the opinion of Secretary after Secretary and allowing the representation to lie without being attended to is not the type of action which the State is expected to take in a matter of such vital import. The Supreme Court further observed that the representation must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. In this view of the matter the

Supreme Court declared the detention to be unconstitutional.

18. Mr. Tripathi laid stress on the words "representation must be dealt with continuously until a final decision is taken and communicated to the detaining authority." He submitted that the ratio of this judgment is clearly applicable to the facts of this case. The judgment of the Division Bench of this court in Sadanand M. Shaligram's case (supra) is also on the point of delay in communicating the result to the detenu.

19. It is true that so far as time taken to communicate the rejection reply to the detenu is concerned no affidavit is filed explaining it. In this connection we may refer to Sri Ram Sukrya Mhatre v. R. D. Tyagi & Ors., A.I.R. 1994 S.C. 1134. In that case also it was argued that there was a delay in considering the representation by the Central Government. The delay was not properly explained in the counter affidavit filed on behalf of the Central Government. In the circumstances, the court perused the note file and came to a conclusion that the argument that there is any delay in considering the representation had no substance.

20. In the light of Sukrya Mhatre's case (supra), we have also perused the file of the Yerwada Central Prison which is produced in the court. It shows that communication dated 22.4.2004 was served on the detenu on 24.4.04 and the detenu has signed in token of having received a copy thereof in the presence of a jailor of Yerwada Central Prison. Therefore, there is no substance in the contention of Mr. Tripathi that there is any delay in communicating the rejection reply to the detenu.

21. In our opinion Harish Pahwa's case (supra) also does not help the detenu to contend that the present detention order must be set aside on the ground of delay in considering the representation. In that case parawise comments were called from Customs and again opinion of the law department was called. It is in these circumstances that the Supreme Court observed that unless it is absolutely necessary to wait for some assistance, the representation must be dealt with continuously until a final decision is taken and communicated to the detenu. Such are not the facts here. No comments were called from the sponsoring authority. In the circumstances of the case, the representation was dealt with utmost dispatch. The judgment in Harish Pahwa's case (supra) will have to be confined to its own peculiar facts.

22. Mr. Tripathi then urged that the instances on which the detaining authority has placed reliance do not indicate that on account of the detenu's activities public order was disturbed. We are not impressed by this submission. Grounds 5(a)(i) and 5(a)(ii) refer to two cases registered under the Bombay Prohibition Act, 1949. The detenu was found in possession of large quantity of illicit liquor. These two cases therefore, indicate that the detenu is a bootlegger.

23. In-camera statements of witnesses A and B indicate that the detenu's activities as a bootlegger are calculated to cause harm danger or a feeling of insecurity in the mind of general public or any section thereof. Statement of witness A indicates that in the second week of December, 2003, witness A and his daughter had gone to a bore-well to fetch water near Vaishnavi Maruti temple. Other nearby residents were also present for taking water. At that time the detenu and his associates brought rubber tubes of Hatbhatti on

four bicycles. Two of detenu's associates came near the bore-well. They forcibly removed the pots of other ladies and started to take water for mixing it in the country liquor. There was hot exchange of words between the witness and the detenu's associates. At that time the detenu and his another associate came there. He abused the witness and started assaulting him. The daughter of the witness appealed to the people for help. On account of this incident people were frightened and they ran helter-skelter. The detenu and his associates left after threatening the witness and others. In our opinion an incident of this type is bound to affect the public order.

24. Witness B has stated that in the first week of January, 2004 at about 18.00 hrs. he along with his wife and daughter was returning home from a shop situated at Sagar Chowk. After they covered a short distance, one drunkard came there and he vomited. The vomit smeared the clothes of the daughter of the witness. He got angry and caught hold of the drunkard and pushed him and abused him. People gathered there. At this stage the detenu and his associate, who was looking after his liquor joint came there and started abusing the witness. The witness got scared. The detenu again abused him. He had a chopper in his hand. Seeing this the people ran away. The detenu and his associates started assaulting the witness. The wife and daughter of the witness appealed to the people for help but due to the terror created by the detenu nobody came forward to render help. The detenu warned the witness that, if he entered into any arguments with his customers or, if he complained he will not allow him to stay in the area. This incident indicate the magnitude of terror created by the detenu. In our opinion, it does affect public order. This submission of Mr. Tripathi would, therefore, fail. No other submissions were made by Mr. Tripathi.

25. In the result the petition is dismissed.

(SMT. RANJANA DESAI, J.)

(A. S. OKA, J.)